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PATRICK W. RASCHE
ARMSTRONG TEASDALE, LLP
ONE METROPOLITAN SQUARE, SUITE 2600
ST. LOUIS, MO 63102

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OFFICE OF PETITIONS

In re Application of :
Fuselier, et al. :
Application No. 09/681,574 :
Filed: May 1, 2001 :
Attorney Docket No. 41EB-9023 :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 8, 2006, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed October 27, 2004. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 28, 2004. A Notice of Abandonment was mailed on March 20, 2006.

Applicants contend that a "Response to the Notice to File Missing Parts" and a five (5) month extension of time were deposited in USPS Express Mail service (Express Mail mailing label #EV459189625US) on May 27, 2005.

37 CFR 1.10(e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day;
- (4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

The instant petition is accompanied by a statement by Robert B. Reese, III; a copy of the Express Mail mailing label # EV459189625US that indicates a "date-in" of May 27, 2005; and a copy of the originally deposited papers of which each piece of correspondence had indicated the Express Mail number EV459189625US.

Robert B. Reese, III, states the "Response to the Notice to File Missing Parts" with the request for a five (5) month extension of time were deposited with the U.S. Postal Service (USPS) on May 27, 2005. Furthermore, Robert B. Reese, III, states the copies of the application papers and Express Mail mailing label are copies of those that were originally mailed.

It is noted that petitioner has also submitted a copy of the stamped postcard receipt that indicates receipt by the USPTO of the "Response to the Notice to File Missing Parts" on May 27, 2005. Furthermore, a review of the financial records for the above-identified application indicates the late declaration surcharge and the five (5) month extension of time fees were received on May 27, 2005.

In view of the evidence present in the file, it is concluded that the "Response to the Notice to File Missing Parts" and the five (5) month extension of time were submitted to USPS Express Mail service on May 27, 2005 and are considered as submitted with the USPTO on that date.

The petition is granted and the holding of abandonment is hereby withdrawn.

The application is being returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at
(571) 272-3228.



Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy